

State of California

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Legislative Change No.

04-2

Bill Number: AB 1740

Author: AR&T Committee

Chapter Number: 04-13

Laws Affecting Franchise Tax Board: 17041, 17052.6, 17301.3, 17302, 19131, and 19136.11

Date Filed with the Secretary of the State: February 11, 2004

SUBJECT: AB 1115 Clean-Up/Child and Dependent Care Credit (California CDC) / Resolves a Constitutional Issue Regarding The Alimony Deduction/Late Filing Penalty

Assembly Bill 1740 (AR&T Committee), made the following changes to California law:

1. Sec. 17041

- a. Sec. 17041(d)(2) changes the reference from subdivision "(a)" to "(c)" to correct the cross-reference to the head of household tax rates.
- b. Sec. 17041(i)(1)(B) changes the reference from "Section 17031" to "Section 17301" to correct the cross-reference to the beginning section of Article 9 of Chapter 3.
- c. Section 17041(i)(3) is changed to explicitly provide that in calculating the "taxable income of a nonresident or part-year resident," the calculation of prior year items is to be made as if the nonresident or part-year resident (for the period of nonresidency) was a nonresident for all prior years.

This change is effective February 11, 2004, and operative for taxable years beginning on or after January 1, 2004.

2. Sec. 17052.6

- a. Sec. 17052.6(b) and 17052.6(d) change the reference to the appropriate adjusted gross income (AGI) definition when determining the percentage of credit.
- b. Sec. 17052.6(e) deletes the requirement for the taxpayer to maintain a home in California, clarifies that employment-related child and dependent care expenses are required to have occurred within the state for purposes of the California CDC, and limits the credit to earned income from sources within this state.

This change is effective February 11, 2004, and operative for taxable years beginning on or after January 1, 2004.

3. Sec. 17301.3 - Explicitly provides the sourcing rules for nonresidents and part-year residents to reflect the repeal of former Sec. 17303 and the change made to Sec. 17041 with respect to part-year residents that were made by AB 1115 (Stats. 2001, Ch. 920). This change is effective February 11, 2004, and operative for taxable years beginning on or after January 1, 2004.

Bureau Director

Jana Howard for Brian Putler

Date

6/9/04

4. Sec. 17302 - Amended to provide that the deduction for alimony payments is **allowed** to a nonresident or part-year resident in the same ratio (not to exceed 1.00) that "California AGI" for the entire year, computed without regard to the alimony deduction, bears to "total AGI" for the entire year, computed without regard to the alimony deduction. This ratio is consistent with the treatment of adjustments to income for nonresidents under current law as amended by AB 1115 (Stats. 2001, Ch. 920). This change is effective February 11, 2004, and operative for taxable years beginning on or after January 1, 2004.

5. Sec. 19131 – Amended to create a presumption that the late filing penalty does not apply to the California return when all of the following conditions are met.

- The taxpayer has filed a federal return after its due date.
- The Franchise Tax Board proposes a deficiency based upon a final federal determination.
- The Internal Revenue Service abates the federal late filing penalty based upon reasonable cause.

The section provides that the Franchise Tax Board may rebut the presumption by establishing through a preponderance of the evidence that the late filing of the California return was not due to reasonable cause or was due to willful neglect.

This change is effective and operative February 11, 2004.

6. Sec. 19136.11 - Added to waive estimated tax penalties for the 2002 taxable year. This change is effective February 11, 2004, and operative for taxable year 2002.

This act will not require any reports by the department to the Legislature.